

1 || FILED LODGED ENTERED RECEIVED

Judge Ronald B. Leighton

JUN 06 2011

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

Received From
SEATTLE

JUN 07 2011

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNDER SEAL,

NO. C09-5558-RBL

Plaintiffs,

V.

13 | UNDER SEAL,

FILED UNDER SEAL

**Note on Motion Calendar for:
June 6, 2011**

Defendant.



09-CV-05558-M

United States Attorney
700 Stewart Street, Ste. 5220
Seattle, Washington 98101
(206) 553-7970

Judge Ronald B. Leighton

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA, ex rel.
SHEILA REIBER,

Plaintiffs,

V.

BASIC CONTRACTING SERVICES, INC., a New Mexico Corporation,

Defendant.

No. C09-5558-RBL

FILED UNDER SEAL

Noted for: June 6, 2011

**UNITED STATES' NOTICE OF ELECTION
TO DECLINE INTERVENTION AND MOTION TO LIFT THE SEAL**

Pursuant to the False Claims Act, as amended, 31 U.S.C. § 3730(b)(4)(B), the United States of America hereby notifies the Court of its decision not to intervene in this action.

Although the United States declines to intervene, the government respectfully refers the Court to 31 U.S.C. § 3730(b)(1), which allows the relator to maintain the action in the name of the United States; providing, however, that the “action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.”

Id. The United States Court of Appeals for the Ninth Circuit has held that, notwithstanding this language, the United States has the right only to a hearing when it objects to a settlement or dismissal of the action. *United States ex rel. Green v. Northrop Corp.*, 59 F.3d 953, 959 (9th Cir. 1995); *United States ex rel. Killingsworth v. Northrop Corp.*, 25 F.3d 715, 723-25 (9th Cir.

1 1994). Therefore, the United States requests that, should either the relator or the defendant
2 propose that this action be dismissed, settled, or otherwise discontinued, this Court provide the
3 United States with notice and an opportunity to be heard before ruling or granting its approval.

4 Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that all
5 pleadings filed in this action be served upon the United States and that orders issued by the
6 Court be sent to the Government's counsel. The United States reserves its right to order any
7 deposition transcripts, to intervene in this action, for good cause, at a later date, and to seek the
8 dismissal of the relator's action or claim under 31 U.S.C. § 3730(e)(4).

9 The United States also requests that it be served with all Notices of Appeal.

10 Finally, the Government requests that the relator's Complaint, this Notice, and the attached
11 proposed Order be unsealed. The United States requests that all other papers on file in this
12 action remain under seal because in discussing the status and extent of the United States'
13 investigation, such papers are provided by law to the Court alone for the sole purpose of
14 evaluating whether the seal and time for making an election to intervene should be extended.

15 A proposed order accompanies this notice.

16 DATED this 6th day of June, 2011.

17

18

Respectfully submitted,

19

20

JENNY A. DURKAN
United States Attorney
Western District of Washington

21

22


HAROLD MALKIN
Assistant United States Attorney

23

24

25

26

27

28

JOYCE R. BRANDA
NIALL M. O'DONNELL
Attorneys, Civil Division
U.S. Department of Justice
P.O. Box 261
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 353-0506

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the office of the Untied States Attorney for the Western District of Washington and is a person of such age and discretion as to be competent to serve papers

That on this date, she served copies of the *Notice of Election to Decline Intervention and Motion to Lift the Seal*, along with the *Proposed Order*, on the person(s) hereinafter named by depositing said copies in the United States mail, postage prepaid, addressed as follows:

Stephen A. Teller
Teller & Associates, PLLC
1139 34th Ave., Suite B
Seattle, WA 98122

DATED this 6th day of June, 2011.

LINDA SEILINGER
Paralegal Specialist
United States Attorney's Office
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
Phone: (206) 553-2637
Fax: (206) 553-4073
E-mail: linda.seilinger@usdoj.gov